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C O N F I D E N T I A L SECTION 01 OF 02 SANAA 002559

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PLEASE PASS TO NEA/PI FOR LAURA SCHULZ; NEA/ARP FOR STEVEN WALKER.

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SUBJECT: UNDER YEMEN'S NEW CHIEF JUSTICE, THE PEOPLE'S COURT IS NOW IN SESSION

REF: SANAA 2546

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Classified By: Ambassador Thomas C. Krajeski for reasons 1.4 (b) and (d).

11. (U) SUMMARY: Ambassador met Yemen's Chief Justice Esam Abdul-Wahab al-Samawi for the first time on August 29, and discovered a youthful voice for reform and moderation. Samawi expressed the need for a clearer legal framework for trying suspected terrorists and would-be jihadis. As the newly appointed Head of the Supreme Judicial Council (SJC), Samawi staked out a clear position against corruption and in favor of judicial independence. He requested American assistance in training young judges, and strengthening the administration of the courts. Despite endemic problems in Yemen's judicial system, under new leadership the courts now offer some promise for democratic reform. END SUMMARY.

Humanism and Islamic Law Together in Yemen

12. (U) On August 29, Ambassador met Judge Samawi, Chief Justice of Yemen's Supreme Court and Head of the SJC. Despite his traditional appearance (which included a silver dagger), Samawi immediately made clear his modernist views on the law and the role of the judiciary. "Human principles underlie both bodies of law (Islamic and Western) and this is based on God's will," explained Samawi. "Security and freedom are essential to man's honor, and must be protected," he continued. Samawi stated that there was "no conflict between modern legal practices and religion."

13. (U) "Yemen is witnessing great steps forward on democracy and judicial independence," declared Samawi. (Reftel) At the age of only 44, Samawi has become an integral part of these reforms. In February, he was tapped by the President to head the Supreme Court. In June, he was given the additional responsibility of chairing the SJC, which was removed from the Presidential Office and charged with overseeing a newly independent judiciary. (Reftel) Many view Samawi's appointment as a new era for the Court, previously perceived as extremely conservative and subservient to the ROYG.

Courts Struggle With Terrorism

14. (C) Ambassador raised the recent decision of Judge

Mohammad al-Badani to acquit 19 suspects accused of traveling to Iraq to fight with insurgents. To a limited extent, Samawi seemed to defend Badani's primary contention that Yemeni law did not explicitly forbid such actions, and stressed the need for the ROYG to issue clear laws on the matter. At the same time, the Chief Justice was eager to disavow the notion that Yemeni courts would protect terrorists. An appeals court will review the case, explained Samawi, and Badani himself would be subject to investigation to ensure that he followed proper procedures. "We cannot interfere directly with the ruling," said Samawi, "as we need to preserve judicial independence." Nevertheless, Samawi assured Ambassador that if Badani was found negligent he would receive "additional training."

15. (C) On the possible return of Yemeni detainees from Guantanamo Bay, Samawi expressed his hope that those currently held would receive a fair trial and have a chance to defend themselves. "It is inhuman and unfair to detain without trial," said the Justice. The United States, however, faced a real violation and needed to respond in kind, continued Samawi, referring to September 11. Ambassador and the Justice agreed on the importance of the judiciary in protecting the legal rights of all individuals.

Taking Inspiration From the United States

16. (U) The Chief Justice praised the American example in human rights and democracy, and welcomed assistance to Yemen's developing judicial system. Ambassador welcomed the opportunity for cooperation, stressing the importance of an exchange of ideas between the two countries. He suggested a visit to the United States by Samawi and other judges, and promised to explore the possibility of a meeting with U.S. Supreme Court Justices.

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17. (U) Samawi emphasized the Court's importance in combating corruption, and requested assistance for the judicial inspection authority. Ambassador agreed that an independent judiciary is a necessary foundation for fighting corruption, noting that no official in the United States is above the law. (NOTE: Samawi has already taken action against corrupt judges, referring 10 cases to the Attorney General. (Reftel) END NOTE.)

Chief Justice Appeals for Outside Help

18. (U) Yemen's courts are in need of outside support, said Samawi, especially in training judges and establishing a modern administrative system, and went so far as to request U.S. assistance in erecting a new building for Yemen's Supreme Court. Samawi expressed gratitude to Ambassador for bringing Yemeni judges for training in the United States, particularly in the field of intellectual property rights, and requested additional assistance for commercial courts. Ambassador shared that he and the Minister of Justice recently discussed the possibility of using the MEPI-funded Commercial Law Development Program to train young judges in commercial law.

19. (U) On the recent troubles of the American Bar Association/Central and Eastern European Law Initiative (ABA/CEELI), a MEPI-funded program, Samawi said the group's reform efforts fell victim to local politics. (Reftel) He encouraged the ABA's local representative to continue working with a low profile, and indicated that the matter would be resolved by the Minister of Justice at a later date. "Once we have determined that ABA is doing strictly non-governmental work," assured Samawi, "the Minister of Planning will likely provide authorization. The Justice

welcomed an ABA proposal to bring members of the SJC for training with European counterparts, but said the upcoming elections would keep them in country for the coming months.

COMMENT: Reform Flourishes in Judiciary

¶10. (U) Democratic reform in Yemen is often an unpredictable process, but it has recently found fertile ground in the judiciary. President Saleh appears to have given the SJC and MOJ wide latitude in defining judicial independence and combating corruption. With young modernists heading these offices, post now has a willing partner for cooperation on issues including security, elections, and human rights. Post is seeking to mobilize all available resources and expertise to assist the courts in this critical phase. Many recent reforms were specifically outlined in Yemen's Threshold Proposal for the Millennium Challenge Corporation. Despite being suspended from the program one year ago, the ROYG advanced the plan without outside support -- a strong indication of the Government's commitment. This is welcome news, as an improved judiciary in Yemen is the key to improving the investment climate, fighting corruption, and protecting the rights of citizens.
Krajeski